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STATE FOR EB/TPP/MTA/IPC AND EAP/MTS
STATE PASS USTR FOR B. WEISEL, D. BELL, J. GROVES
USDOC FOR JENNIFER BAKER
COMMERCE PASS USPTO FOR P. FOWLER

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SUBJECT: DOMESTIC TRADE MINISTRY: NEW SECRETARY GENERAL ROCKING THE BOAT

11. (SBU) Summary: Mohd Zain bin Mohd Dom, Secretary General of the Ministry of Domestic Trade and Consumer Affairs (MDTCA), is spearheading efforts to create a more business-friendly ministry. Zain's appointment to the Ministry's third ranking position in early 2007 has brought welcome access for a range of non-government actors with an interest in the ministry's policy-making process. Given the MDTCA's key role in such areas as intellectual property protection, competition, and domestic retail trade, significant positive change based on private sector input could improve Malaysia's business climate substantially. Zain is seeking such input as the government continues to finalize a draft competition law, despite being legally constrained from sharing draft text. He is also seeking more commercial sector input for the MDTCA's changes to distributive trade guidelines and to its nascent efforts to formulate a broad intellectual property policy. In a recent courtesy call by Econ Counselor and econoff, as well as a candid talk to Amcham members, Zain outlined his vision for the ministry. He also commented to Econ Counselor and econoff on several FTA-related issues, including his guarded optimism that progress could be made in the talks on IPR, competition, and even government procurement, provided the U.S. shows some additional flexibility. End summary.

12. (SBU) In a speech to the American Malaysian Chamber of Commerce on September 4, Zain outlined a vision of an MDTCA as attuned to the needs of commercial interests as it is to consumer interests. He noted that upon his arrival in the ministry there was a general lack of interest among staff in seeking out viewpoints from relevant non-government actors, for example from the business industry with regards to development of a competition law, or amendments to the distributive retail trade policy. Likewise it was difficult for such interested parties to obtain meetings with MDTCA official to express their views.

13. (SBU) Zain said he is determined that the MDTCA obtain a wide range of views on policy matters, as the ministry must know the real world experience of non-government actors in order to implement effective policy. As an example, he noted the MDTCA's distributive retail trade policy, which was revamped in late 2004 without the participation of many affected commercial interests, and with little regard to its investment implications. Thus the 2004 guidelines have had to undergo several subsequent revisions to account for the complaints of commercial interests. Zain said he even heard accounts from domestic industry representatives that indicated they were considering moving their future investments overseas because of the increased restrictions caused by the distributive retail trade policy amendments.

14. (SBU) Although Zain mentions the strong political support he has received from the Prime Minister and MDTCA Minister Shafie Apdal, he

told Amcham that he is realistic about the continued strong opposition in some quarters of the government, which will continue to inhibit the MDTCA from moving forward as fast as Zain would prefer. Zain also is pushing for more autonomy among lower-level bureaucrats to limit the number of decisions that are bumped to senior ministry officials (and inevitably delaying decisions). As he told Amcham, he foresees MDTCA as a "thinking ministry" that will seek solutions to problems rather than narrowly interpret laws and regulations.

Pending Competition Law - The Legal Limits of

Transparency

15. (SBU) Zain has promised greater industry and NGO involvement in the government's longstanding efforts to finalize a draft competition law. He is constrained by the Official Secrets Act from sharing the actual text of the draft bill outside the government, however. To compensate, Zain is providing industry and consumer groups with summaries of the concepts and goals of each article in the draft legislation in the hope that the groups would then be able to provide more useful input. Many of those groups have already complained that without the actual draft text and its myriad details, it will be difficult to make truly useful comments. Thus Zain expects a difficult discussion, especially given the disparate interests of the three groups (government, industry, and NGOs). He has pushed for this novel approach towards greater transparency, which he says has the backing of the PM and the Minister of Domestic Trade. At the end of the day, Zain said, he would only recommend moving forward on the draft after these interest groups have expressed general consensus with MDTCA's approach. He added that the eventual competition law would not be set in stone, but was a first step to creating a flexible government approach to enforcing

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competition.

16. (SBU) Of U.S. efforts to negotiate a competition chapter in the U.S.-Malaysia FTA, Zain noted that Malaysian negotiators continued to be constrained by the Cabinet's decision earlier this year to not negotiate a competition chapter. He added that the ministry would not likely seek a revised decision by the Cabinet unless the U.S. was to indicate some new flexibility in this area.

Distributive Retail Trade - Yet Another Look

17. (SBU) Zain noted both to econoffs and to Amcham that the GOM should be willing to examine the current preference programs for the bumiputera (ethnic Malays), including the 30 percent equity requirement for direct selling operations. Changes were needed to limit the ability of a small group Malays to benefit financially from the preference policy by selling access to non-Malays (the so-called "ali baba" syndrome). However, he also admitted that it is politically difficult to have an open discussion of preference policies in Malaysia. In addition, existing foreign operators in Malaysia had already accepted the equity restrictions, making it difficult to convince politicians to relax current policy to allow future entrants more relaxed terms.

IPR - Government Pledges Funds, Seeks Ideas

18. (SBU) Zain told the Amcham that formulating and implementing Malaysia's national IP policy (announced by the Prime Minister earlier this year) was an MDTCA priority. The ministry needs to report to a task force chaired by the PM by the end of the year on how to use the targeted funding of RM 5 billion (USD 1.4 billion), and welcomed private sector suggestions. Zain extolled the potential from the recent advent of a separate intellectual property court in Malaysia, but said work continues on expanding the court to locations other than Kuala Lumpur.

19. (SBU) As with competition, Zain told econoffs that some degree of flexibility from the U.S. side on some key remaining sticking points

in the IPR discussions would give the Malaysian negotiating team greater ability to convince senior officials to agree to more flexible negotiating terms. On the up side, when asked how much negotiating space the GOM had on IPR, Zain said that the GOM had a general commitment to meet international standards on IPR in order to ensure Malaysia was well positioned to move up the value chain. Therefore, there was room to push the GOM to sign on to existing multilateral treaties.

Other FTA Issues

¶10. (SBU) Government procurement: Zain told econoffs that he did not foresee much chance for movement on negotiating a government procurement chapter, as Cabinet ministers looked at the issue from the UMNO political perspective first. From that perspective, heading into the next elections, there was not a single item that was hotter and more sensitive in the FTA talks. He did say, however, that if USTR laid out some flexible options, perhaps GOM negotiators could take them back to Cabinet in hopes of creating a bit of negotiating room.

¶11. (SBU) Financial Services: Zain was less pessimistic about financial services, however, saying Malaysia was moving in a good direction on liberalization and that the political sensitivities for UMNO were narrower in scope - focused as they were on elite special interests in the financial sector that objected generally to liberalization. Since ongoing banking sector consolidation would probably result in three large, internationally competitive domestic institutions, there should be room for specific commitments for gradual easing of restrictions on foreign institutions. Such commitments could include new licenses and/or more branching.

¶12. (SBU) Labor and Environment: Zain believes the GOM could reach accommodation on these chapters. The PM, he noted by way of explanation, was more forward leaning on environment issues than others, including Rafidah - a point which came out in their comments at the APEC Leaders meeting, where Rafidah objected to its inclusion on the agenda but the PM saw no difficulty in addressing it.

Comment

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¶13. (SBU) Given Zain's long previous tenure at the Ministry of International Trade and Industry (MITI), where he most recently led Malaysia's Multilateral Trade Office, it's not surprising that he is more attuned to the concerns of commercial interests. Over the years MITI has steadily implemented policies designed to attract foreign investment into Malaysia, and Zain appears determined that MDTCA policies not adversely impact Malaysia's ability to continue to attract such investment. Zain's appointment to the top civil servant job at the MDTCA broke with the tradition of having a career ministry official move up to the top job through the ranks, and reflected the PM's genuine interest in creating a more business-friendly government. We understand that Zain's appointment was engineered by Tan Sri Sidek Hassan, the PM's Chief Secretary (the government's most senior civil servant), who formerly was Zain's boss as MITI Secretary General; Sidek also co-chairs Pemudah, the PM's public-private sector initiative which aims to simplify business operations in Malaysia by improving government services. Despite having these heavy-hitters on his side, Zain will continue to be challenged by MDTCA staffers who are just gradually learning how to formulate policy in a more transparent manner.

KEITH